IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03/02/2003

Coram

THE HONOURABLE MR. JUSTICE M. KARPAGAVINAYAGAM
And
THE HONOURABLE MR. JUSTICE A.K. RAJAN

CRIMINAL APPEAL No.655 of 1998

Natarajan .. Appellant

-Vs-

Union Territory of Pondicherry,
Rep. by the Inspector of Police,
Odien Salai Police Station,
Pondicherry.
(Crime No.151/96) .. Respondent

Criminal Appeal against the conviction and sentence imposed in S.C.No.43 of 1997 of 1999 on the file of the II Additional Sessions Judge, Pondicherry, dated 31.3.1998.

For Appellant : Mr. A. Ramesh for
M/s. Ram & Ram

For Respondent : Mr. A.P. Surya Prakasam
Addl. P.P. (Pondicherry)

:JUDGMENT

M. KARPAGAVINAYAGAM, J.
The misfortune to be noticed in this case is that the name of the deceased, an old lady, aged about 70 years, who met with an unfortunate death in a gruesome murder for gain is Fortune Amalore.

2. The accused Natarajan, the appellant herein was convicted for the offences under Sections 449, 302, 404 and 201 I.P.C. on the charge that on 30.9.1996 at about 8.30 P.M., he trespassed into the house of Fortune Amalore alias Soundariammal, residing lone at Pondicherry and committed her murder by hitting with rice pounder and compressing her throat with his legs and threw the dead body into the well at the backyard and fled away with her jewels. Challenging the same, he has filed this appeal.

3. The facts leading to conviction in brief are as follows:
"(a) The deceased Fortune Amalore alias Soundariammal was aged about 70 years. She has got three sons, who are residing in France. She was living alone in her house at No.32, Ignacy Maistry Street, Pondicherry. The upstairs of her house was rented to one Lawrence, the husband of P.W.2 Lucia.

(b) On 1.10.1996, P.W.5 Srinivasan, the milk vendor came to her house in the early morning and kept milk in her kitchen through the back door as usual. Again on 2.10.1996, P.W.5 came in order to supply milk. He found that the milk kept by him on 1.10.1996 was not used. When he enquired the tenant in the upstairs, he told that she would have gone outside. On 3.10.1996, the milk vendor (P.W.5) again came to the house and went to the backyard to keep the milk. He found that the milk, which was alread y kept got spoiled. This time, the tenant Lawrence, the husband of P.W.2 Lucia and the milk vendor (P.W.5) entered into the house of the landlady in search of her. They could not find her inside the house.

(c) P.W.1 Kannadasan is residing in the same street. P.W.1 often used to come to the house of the landlady for doing all her sundry works. In order to know about her whereabouts, P.W.2's husband and P.W.5 enquired P.W.1. P.W.1 then searched the l ady in the nearby locality and in her friends' houses and informed the tenant that he could not find the landlady anywhere.

(d) P.W.1 and P.W.2 went back to the house and smelt a foul smell emanating from the well which was covered with an iron sheet. On lifting the iron sheet, P.W.1 to his shock found that the body of Fortune Amalore was floating in the well upside dow It was about 12.00 Noon on 3.10.1996. After informing this to her family friends, he rushed to the police station.

(e) At about 1.30 P.M., P.W.1 gave a complaint Ex.P1 to P.W.19 Sub Inspector of Police. On receipt of the complaint, he registered the case under Section 302 I.P.C. Ex.P41 is the F.I.R.

(f) As soon as the message was received, P.W.21, the Inspector of Police came to the police station and took up investigation. He went to the spot along with the Police Photographer and Finger Print Expert. He prepared observation mahazar Ex.P4 and roug h sketch Ex.P48. He recovered M.O.16 ever-silver bowl, M.O.17 water bottle. He further recovered M.O.18 carton box suspected to contain the finger prints of the culprit and handed over the same to P.W.20 Finger Print Expert. He also recovered M.Os.19 t o 24 from the scene. Then, the body was taken out from the well. P.W.21 held inquest from 3.00 P.M. to 8.00 P.M. The inquest report is Ex.P3. Then, he recovered M.Os.25 to 33, clothes, cement slab stone, etc. from the scene. He examined the witnesses. In the meantime, the body was sent for post-mortem to the General Hospital, Pondicherry.

(g) P.W.16 Doctor, on receipt of requisition from P.W.21, the Inspector of Police, conducted post-mortem on 6.10.1996 at 10.30 A.M. He found five injuries on the body. He also noticed on internal examination that there was a skull fracture from right t emporal to left temporal region and dark brown contusion over lower part of left side of neck. The post-mortem certificate

is Ex.P22. After getting the Chemical Examiner's report, he gave final opinion Ex.P24 that the death was due to cumulative effect of head injury and strangulation of neck.

(h) P.W.21, the Inspector of Police continued the investigation and took steps to apprehend the culprit. On 7.10.1996 at about 9.30 A.M., P.W.21 arrested the accused near Bharathi Street at Pondicherry. Then, he was brought to the police station where a confession statement was recorded in the presence of P.W.10 Arumugham. Ex.P9 is the admissible portion of the confession.

(i) In pursuance of the confession, the accused took the police party to his house at about 12.45 P.M. and pointed out rice pounder (M.O.38), the weapon of offence and his clothes (M.Os.39 to 41) and the same were recovered. Then, the accused took out a Rexene bag (M.O.42) from a bush next to his house. From the bag, M.Os.3,5 to 14, 48 to 50, the jewels belonged to the deceased were recovered. Along with that, M.O.51, the cheque book containing leaves also was recovered. This recovery was effected at 3.30 P.M.
(j) Then, the accused took the police party to the well where the body was thrown after committing murder. The arrangements were made to pump out the water from the well. After the water was drained out fully, it was found inside the well a yellow meta l Thali (Mangalyasuthra)-M.O.4, Ammi-M.O.43 and blue colour saree-M.O.44 and the same were recovered.

(k) At about 6.30 P.M., the accused took the police party to his friends' room at Dharmapuri at Pondicherry. His friends P.W.14 Kumar and P.W.15 Unnikrishnan were available in the room. The accused went inside the kitchen room and took out the bloodst ained shirt-M.O.45 and bloodstained dhoti-M.O.46 and handed over the same to the police stating that these clothes were worn by him at the time of occurrence. P.W.14 Kumar identified M.Os.39 and 40, which+ were recovered from the accused in his house be longed to P.W.14 stating that the same were given by him on 30.9.1996 night to the accused, since the accused told him that his clothes got stained with blood as he met with an accident. P.W.15 handed over Ex.P19 pawn receipt to the police stating that the same was handed over to him by one Chandrasekar, who was in charge of the Shoe Company under whom P.W.14, P.W.15 and the accused were working. This was at 7.00 P.M.

(l) Thereafter, the accused took the police party at about 7.40 P.M. to P.W.13 Mahaveer Chand Jain stating that he pledged a ring belonged to the deceased with him. Then, P.W.13 was interrogated. He stated that the gold ring M.O.15 was pledged by the a ccused and handed over the same to P.W.21. The same was recovered under mahazar Ex.P17. Along with that, Ex.P20 pawn receipt was also shown to the police which contained the signature of the accused. Ex.P20 is the carbon copy of Ex.P19.

(m) Then, the accused was brought back to the police station. The accused was then wearing the sandal colour shirt M.O.52 and the same was also recovered. Then, the fingerprints of the accused were taken by P.W.21 at the police station and the same were handed over to P.W.20 Finger Print Expert. In the meantime, the jewels recovered were shown to P.W.4 Clamanthin, the family friend of the deceased and they were identified as that of the deceased.

P.W.12 Goldsmith also identified some of the jewels sta ting that he only made those jewels and handed over the same to the deceased.

(n) After comparison, P.W.20 Finger Print Expert gave certificate Ex.P45 giving opinion that the finger prints of the accused tallied with the finger print of carton box M.O.18 recovered from the scene of occurrence.

(o) P.W.22 another Inspector of Police, who took up further investigation, examined other witnesses and filed the charge sheet against the accused for the offences under Sections 302, 449, 404 and 201 I.P.C.

(p) During the course of trial, P.Ws.1 to 22 were examined, Exs.P1 to P56 were filed and M.Os.1 to 52 were marked.

(q) When the accused was questioned under Section 313 Cr.P.C. with regard to the incriminating materials, he denied having committed the offences. No witness was examined on the side of defence, but Exs.D1 to D3 were marked to show that the F.I.R., ch was sent at 2.30 P.M. from the police station on 3.10.1996, was received by the Magistrate only at 10.30 P.M.
(r) Considering the materials available on record, the trial Court ultimately found the accused guilty of the offences for which he was tried and convicted and sentenced him thereunder. Hence, this appeal."

4. Mr. A. Ramesh, the learned counsel appearing for the appellant/accused would make the following contentions:
"The confession Ex.P9 is not a valid and voluntary one. This is evident from the fact that the signature of the accused has not been obtained in the said confession. Furthermore, the admissible portion of confession, Ex.P9 would not show the speci details of the places from where the various articles have been recovered. Therefore, the statement cannot be said to be the informative statement and as such, the discovery in the absence of the informative statement, makes the confession statement inv alid and unreliable. According to P.W.10, the mahazar witness, the accused was not present when the articles were recovered at the respective places and at that time, he was sitting in the police van. As such, his evidence contradicts the evidence of P. W.14 and P.W.21. P.W.21 Inspector of Police had admitted that the accused was arrested on suspicion. At the time of making the confession, the accused was not in the custody of police in this case. Hence, the recoveries made based on this confession ar e bad in law. The weapon rice pounder was not sent for finding out the finger print. Specimen finger print of the accused was not taken in the presence of Magistrate. Though the signature of the accused was found in Ex.P20, the carbon copy of pawn r eceipt, no such signature was found in Ex.P19, the original. There is no blood found on the rice pounder, the weapon of offence. These infirmities would indicate that there are several missing links in the circumstances projected by the prosecution. Hence, the appellant is entitled to be acquitted."

5. In reply to the above submissions, the learned Additional Public Prosecutor for Pondicherry would contend that the various pieces of the circumstantial evidence placed before the trial Court are sufficient to hold that the accused alone committed offence of murder for gain, that the various

points with reference to the arrest, confession and recovery as contemplated under Section 27 of the Evidence Act have been clearly answered in the various decisions of this Court as well as the Supreme Court and that therefore, there is no merit in the appeal and consequently, the same is liable to be dismissed.

6. The counsel for both the parties would cite several authorities to substantiate their respective contentions.

7. As directed by this Court, both the counsel filed written submissions.

8. We have carefully examined the inherent merits of the rival contentions and gone through the records.

9. This is a case of brutal murder for gain. According to the prosecution, when the deceased Fortune Amalore was residing alone in her house, the accused trespassed into her house on 30.9.1996 night and hit her with rice pounder on the head and com sed her throat with his leg and caused her death. Thereafter, he threw the dead body into the well at the backyard of the house and closed the well by putting the tin sheet. Then, he took away her jewels and sped away.

10. It is the further case of prosecution that on 7.10.1996, the accused was arrested by P.W.21, the Inspector of Police and the jewels as well as the weapon of offence and bloodstained clothes of the accused were recovered.

11. Admittedly, there is no direct evidence. The entire case rests upon the circumstantial evidence. As laid down by the Supreme Court, the following guidelines have to be kept in mind, while appreciating the evidence on record in the case of circ antial evidence:

(1) The circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established.

(2) Those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused.

(3) The circumstances, taken cumulative, should form a chain so complete so that there is no escape from the conclusion that within all human probability the crime was committed by the accused alone and none else.

(4) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation on any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of t should be inconsistent with his innocence.

12. In the light of the above principles, the materials available on record through various circumstances have to be analysed. Before such analysis, let

us catalogue the various circumstances projected by the prosecution:

(A) The deceased was not found in her house from 1.10.1996. Lawrence, the husband of P.W.2 Lucia,the tenant wanted to vacate the house and hand over the key to the deceased landlady. P.W.5 milk vendor kept the milk in the kitchen through the back door on 1.10.1996 early morning. The same was not used till 3.10.1996. P.W.1 Kannadasan found the dead body of the deceased inside the well on 3.10.1996. P.W.16 Doctor who conducted post-mortem gave opinion Ex.P24 on 6.10.1996 that she died due to the inju ries on the head and neck three to four days prior to the post-mortem.

(B) On 30.9.1996, the accused after committing murder went to his friends'(P.Ws.14 and 15) room at Dharmapuri at Pondicherry and stayed there in that night. He left his bloodstained clothes M.Os.45 and 46 in the kitchen and got the new clothes M.Os.39 an d 40 from P.W.14.

(C) On 2.10.1996, the accused pledged one of the jewels, namely M.O.15 gold ring to P.W.13 Pawn Broker and obtained receipt Ex.P19 which was handed over to one Chandrasekar, who was in charge of the Company, who in turn, gave it to P.W.15, the friend of the accused from whom, the same was recovered.

(D) On 3.10.1996, on the complaint of P.W.1, P.W.19 Sub Inspector of Police registered the case for murder. P.W.21, the Inspector of Police went to the scene and recovered ever silver bowl, water bottle and carton box (M.Os.16 to 18) at the spot suspecti ng to contain the fingerprint of the culprit. The finger print contained in M.O.18 were found tallied with that of the accused as per Ex.P45 certificate of P.W.20, the Finger Print Expert.

(E) On 7.10.1996, the accused was arrested and on his confession, the weapon of offence, namely rice pounder M.O.38 and other things M.O.39 lungi, M.O.40 shirt, M.O.41 half hand shirt and M.O.47 pant were recovered from the house of the accused under mahazar Ex.P11 and a Rexene bag M.O.42 containing jewels M.O.3 Attigai, M.O.5 bangle, M.O.6 bangle, M.O.7 nose screw, M.O.8 ring, M.O.9 ring, M.O.10 ring, M.O.11 ear stud, M.O.12 Tubs, M.O.13 nose screw, M.O.14 kumkum cup, M.O.49 chain and M.O.50 Bangle s was taken out from a nearby bush and handed over by the accused to P.W.21. The jewels were identified by P.W.4 and P.W.12 as the jewels of the deceased.

(F) The accused took the police party to the well from where Mangalyasuthra M.O.4, Ammi M.O.43 and saree M.O.44 were recovered under mahazar Ex.P50.

(G) The police party was then taken to the room where P.Ws.14 and 15, the friends and co-workers of the accused were staying and from there, the bloodstained clothes M.Os.45 and 46 belonging to the accused were taken out from the kitchen and handed over to the police by the accused.

(H) The accused took the police party to P.W.13 Pawn Broker from whom M.O.15 ring was recovered and Ex.P20, the carbon copy of Ex.P19 was shown containing the signature of the accused.

(I) The group of the blood found in the bloodstained dhoti M.O.46 worn by the accused tallied with the group of the blood found in the broken Beer bottle M.O.19 collected from the scene of occurrence.

13. Let us now analyse the circumstances projected by the prosecution. The first circumstance, which is to be established by the prosecution, is that Fortune Amalore, the deceased was murdered on the date of occurrence i.e. on 30.9.1996. She was living alone in the ground floor of the house. P.W.2's husband Lawrence was the tenant in the upstair portion. P.W.5 milk vendor had seen the deceased on 30.9.1996 early morning when he supplied the milk. On that day at 7.00 P.M., the deceased took food in the house of her friend P.W.4 Clamanthin and came back home. P.W.1 Kannadasan also had seen the deceased in the night of 30.9.1996. Subsequently, she was not found.

14. On 1.10.1996, P.W.5 came and left the milk in the kitchen through the back door. When he came on 2.10.1996 for supplying milk, he found that the milk kept in the kitchen on 1.0.1996 was not used. The landlady was not found inside. Therefore, P.W. 5 informed this to P.W.2 Lucia, the wife of the tenant. P.W.2 informed him that she would have gone to her friend's house. On 3.10.1996, the milk vendor again came and found the milk kept on 1.10.1996 unused and spoiled. This was informed to the tenan t, the husband of P.W.2.

15. P.W.2's husband also wanted to vacate the premises and hand over the key to the landlady. As she was not available, he enquired about the whereabouts of the landlady with P.W.1 Kannadasan, residing in the same street, who often used to come to meet the deceased for doing sundry works. P.W.1 also enquired at her friends' houses. As she was not available there, he came and informed P.W.2. Then, P.Ws.1 and 2 went to the backyard of the house through the lane. They smelt a foul smell emanating from the well. The well was covered with an iron sheet. Then, P.W.1 removed the iron sheet and on seeing inside the well, he cried stating that the dead body of the landlady was found floating in the well. Then, he gave a complaint Ex.P1 to P.W.19 Sub Inspe ctor of Police.

16. P.W.21, the Inspector of Police came to the spot and took out the dead body from the well and held inquest. He found the injuries on the head and other parts of the body. From inside the house, P.W.21 recovered bloodstained broken Beer bottle, gla ss pieces, etc. (M.Os.19 to 24). He sent the body for post-mortem.

17. P.W.16, the Doctor conducted post-mortem on 6.10.1996 and issued Ex.P22 post-mortem certificate and gave final opinion Ex.P24 that the death of the deceased was due to cumulative effect of head injury and strangulation of neck. He also stated that t he approximate time of death of the deceased was about 3 to 5 days prior to post-mortem probablising the death of the deceased on 30.9.1996.

18. It was detected that human blood of 'O' group was found on the broken portion of the Beer bottle M.O.19 recovered from the scene of occurrence.

19. The above factors would clearly establish that the deceased was done to death only on 30.9.1996 night and body was recovered on 3.10.1996 on the

complaint of P.W.1, who is none other than the brother of the accused. At the initial stage of the invest igation, nobody suspected the involvement of the accused in the murder.

20. Let us now deal with the other circumstances.
21. The accused was arrested on 7.10.1996 at 9.30 A.M. near Bharathi Street by P.W.21. He was taken to the police station where he gave a statement confessing the crime stating that he committed the murder and took away the jewels of the deceased. In pu rsuance of his confession Ex.P9, P.W.21 and others along with P.W.10 were taken to the house of the accused. From there, at about 12.45 P.M., as pointed out by the accused, P.W.21 recovered rice pounder, the weapon of offence M.O.38, lungi M.O.39, shirt s M.Os.40 and 41 and pant M.O.47 under Ex.P11 mahazar. Then, the accused took the police party to a bush next to his house and took out a Rexene bag M.O.42 from the bush. From the said bag, the jewels of the deceased M.Os.3,5 to 14, 49 and 50 and the cheque book containing leaves M.O.51 were recovered under mahazar Ex.P49 attested by P.W.10.

22. At about 4.00 P.M., the police party was taken by the accused to the well where he threw the dead body. After entire water was drained out from the well, the police party was able to find out Mangalyasuthra M.O.4, Ammi M.O.43 and blue colour saree M .O.44, which were recovered under mahazar Ex.P50.
23. Then, the accused took them to Dharmapuri at Pondicherry where his friends reside. He went inside the kitchen of the house and took out the bloodstained shirt M.O.45 and bloodstained dhoti M.O.46, worn by the accused at the time of occurrence and ha nded over the same to P.W.21 and the same were recovered under mahazar Ex.P52. This recovery was at 7.00 P.M.

24. According to the friends P.W.14 and P.W.15, the accused with bloodstained shirt M.O.45 and dhoti M.O.46 came to the room on 30.9.1996 at 12 mid night and informed them that he met with an accident and that was how his clothes got stained with blood a nd then, the accused was given new clothes by P.W.14. Those clothes were identified by P.W.14 as M.O.39 lungi and M.O.40 full-hand shirt which were earlier recovered from the house of the accused.

25. During that time, P.W.15 another friend of the accused handed over Ex.P19, the original pawn receipt which would show that a gold ring was pledged by the accused in a pawn broker shop on 2.10.1996. According to P.W.15, one Chandrasekar, who was in c harge of the Company where P.W.14, P.W.15 and the accused were working, handed over the same to him. This was also recovered by P.W.21. P.W.15 would further state that from 1.10.1996 onwards, he did not see the accused and on 4.10.1996, the accused phon ed up to the Company stating that he was in Tirupati.
26. At about 7.40 P.M., the accused took the police party and showed the Pawn Broker Shop where he pledged the gold ring. P.W.13 is the Pawn Broker. P.W.13 told the police that the accused came on 2.10.1996 and pledged gold ring M.O.15 with him. He furt her identified Ex.P19 as the original pawn receipt issued by him. M.O.15 was recovered from P.W.13 by P.W.21 under mahazar Ex.P53. Ex.P20 is the carbon copy of Ex.P19. This Ex.P20 contained the signature of the accused.

27. After recovery of all these jewels and other articles, the accused was brought to the police station. P.W.4 Mrs.Clamatin, the family friend of the deceased identified all the jewels as that of the deceased. P.W.12 Goldsmith also identified some of th e said jewels stating that the same were made by him for the deceased. The finger prints of the accused were taken by P.W.21 and handed over to P.W.20 Finger Print Expert on 9.10.1996. He examined and compared the same with the chance prints contained in M.O.18 carton box recovered from the scene of occurrence. Ex.P46 is the specimen finger print slips of the accused. On comparison, he found that the chance prints found on M.O.18 and the specimen finger print of the accused in Ex.P46 are identical and they relate to one and the same person.

28. The above materials would reveal that on 7.10.1996, the accused was arrested and on his confession, the weapon of offence and blood stained clothes of the accused were recovered from his house and thereafter, the jewels belonged to the deceased taken out by the accused from the bush were recovered and then, bloodstained clothes worn by the accused were recovered from the house of his friends and M.O.15 gold ring pledged by the accused with P.W.13 was also recovered.

29. It is pertinent to note that the dhoti M.O.46 which was recovered at the instance of the accused was stained with 'O' group blood and the broken Beer bottle M.O.19 recovered from the scene also contained the very same 'O' group blood. As noted above , the jewels recovered from the accused were identified by both P.W.4 and P.W.12 as that of the deceased. It is also relevant to note that till the accused was arrested, nobody thought that the murder was committed for gain. Only after recovery of the jewels from the accused, the investigating agency came to know that it was a murder for gain.

30. Bearing in mind the above circumstances, let us now come to the various questions raised by the counsel for the appellant.

31. Firstly, it is contended that the confession statement which was not signed by the accused is invalid in the eye of law, on the basis of the judgments in JASKARAN SINGH v. STATE OF PUNJAB (1997 S.C.C.(Cri) 651 SC), JOHN DAVID v. INSPECTOR OF POLI CE, ANNAMALAI NAGAR (2002(1) L.W.145 MADRAS) and FELLIX-JOANNAS v. STATE OF KARNATAKA (1998 CRI.L.J.2479 KARNATAKA).

32. In the case on hand, there is no dispute in the fact that no signature of the accused was obtained in the confession, the admissible portion of which is marked as Ex.P9. P.W.21, the Inspector of Police also would admit in his cross-examination that he did not obtain signature in the confession statement Ex.P9.

33. In the above context, the question would now arise as to whether the failure to obtain signature in the confession statement of the accused under Section 27 of the Evidence Act would affect the authenticity or reliability of the disclosure statement .

34. Let us quote the relevant observations made by the Supreme Court and High Courts in the decisions cited by the counsel for the appellant, with reference

to this aspect.

35. In 1997 S.C.C. (Cri) 651 (supra), it is observed as follows:
"The absence of the signature or the thumb impression of an accused on the disclosure statement recorded under Section 27 of the Evidence Act detracts materially from the authenticity and the reliability of the disclosure statement."

36. A Division Bench of the Karnataka High Court in the decision reported in 1998 CRI.L.J.2479 (supra), while acquitting the accused in a murder case only on the ground that the confession statement did not contain the signature of the accused, has follo wed the above judgment of the Supreme Court and made the observation as under:
"We found to our utter shock that the confession of the accused was not signed by the accused. We asked ourselves the question what reliance can be placed on the confession of the accused which is not signed by the accused. In this regard the Supreme C ourt has pronounced that a confession which is not signed by the accused or which does not bear the thumb impression of the accused on that statement renders such statement unreliable. The Supreme Court in 1995 AIR SCW 3485 = 1995 Cri.L.J.3992 (Jackaram Singh v. State of Punjab) at para 8 has held that the absence of the signature or thumb impression of the accused on the disclosure statement recorded under Section 27 of the Evidence Act detracts materially from the authenticity and the reliability of the disclosure statement."

37. The Division Bench of this Court in the judgment reported in 2002(1) L.W. (Crl.) 145 (supra), while acquitting accused in a murder case on pointing out various suspicious features in regard to the voluntary nature of the confession would hold that th e failure to obtain signature of the accused in the confession statement would also make the confession doubtful. The following is the observation:
"It is admitted that the accused was reluctant to give a confession to the police. .... It is also proved that the accused has not subscribed his signature to the above statement."

38. The above decisions of the High Courts and the Supreme Court would clearly indicate that the confession which does not contain the signature of the accused would lose its authenticity and reliability and so, it cannot be acted upon.
39. However, it is noticed that the observation regarding the above aspect made by the Supreme Court in the Jaskaran case reported in 1997 S.C.C.(Cri) 651 = 1995 Cri.L.J.3992 = 1995 AIR SCW 3485 = AIR 1995 S.C.2345 has been reviewed in a suo moto review petition and the very same Bench of the Supreme Court has held that the said observation is erroneous.

40. The main judgment in the above case was rendered by the Supreme Court on 25.4.1995. The said judgment was reported in 1995 Cri.L.J.3992 and AIR 1995 S.C.2345. After publication of the judgment, the Supreme Court suo motu found that the above observ ation is erroneous. Therefore, by the order dated

24.4.1996 directed the Registry to post before the same Bench for suo-motu review on 25.4.1996. The said order passed by the Supreme Court dated 24.4.1996 is as follows:
"We have come across the judgment in Criminal Appeal No.472 of 1985 decided on April 25, 1995 reported in 1995 Cri.L.J.3992. Some of the observations made in para 8 of the said judgment appear to be erroneous. Let the file of the case be put up for suo -moto review before this Bench tomorrow i.e.25-4-96.

(Sd)
A.S. ANAND,
Judge.

(Sd)
M.K. MUKHERJEE,
Judge."

41. On 25.4.1996, in the Suo Moto Review, the very same Bench passed the following order:

SUO MOTO REVIEW IN Crl. Appeal No.472 of 1985

JASKARAN SINGH .. Appellant

versus

THE STATE OF PUNJAB .. Respondent

Date: 25-4-1996

CORAM:
HON'BLE MR.JUSTICE A.S. ANAND
HON'BLE MR.JUSTICE M.K. MUKHERJEE

Upon perusing the appeal, the Court made the following
ORDER

"We have examined the judgment in Crl. Appeal No.472/1985 decided on April 25, 1995, reported in 1995 Crl.L.J. 3992. The following corrigendum be issued:

Page
Instead of
Read
Page 6,
Line 8 to 17
"does not bear the signatures or the thumb impression of the appellant. Even, the recovery memo of the revolver and the cartridges, Ex.P-9/A, which is also attested by Yash Pal and Sukhdev Singh, ASI does not bear either the signatures or the thumb impre ssion of the accused. The absence of the signatures or the thumb impression of an accused on the disclosure statement

recorded under Section 27 of the Evidence Act detracts materially from the authenticity and the reliability of the disclosure statement ".
"was made long time after the appellant was taken into custody by the investigating agency and it is doubtful whether the same was voluntarily made by the appellant".
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42. It is surprising to note that even though the corrigendum had been issued by the Supreme Court by the order dated 25.4.1996 indicating that the view of the Supreme Court with reference to the failure to obtain signature of the accused in the con ion statement has been reviewed and held to be erroneous, the Publishers of the Criminal Law Journal and All India Reporter have never published the said corrigendum. Unfortunately, the corrigendum was not brought to the notice of either the Karnataka High Court or this Court, while deciding the issue in the cases reported in 1998 Cri.L.J.2479 and 2002(1) L.W. (Crl.) 145 respectively. The judgment of the Karnataka High Court was rendered on 18.2.1998. The Division Bench of this Court has rendered th e judgment on 5.10.2001. But, the only Journal wherein the above judgment of the Supreme Court and the corrigendum were published is 1998 JV (1)(Kerala) p.1 to 5. On perusal of the Kerala journal, it is seen that the judgment rendered by the Supreme Cou rt reported in AIR 1995 S.C.2345 on 25.4.1995, the suo motu order passed on 24.4.1996 holding that the observations with regard to the above aspect in the said judgment reported in AIR 1995 S.C.2345 and 1995 Cri.L.J.3992 are erroneous and directing the R egistry to put up for suo moto review before the Bench on 25.4.1996 and the consequent order on 25.4.1996 issuing corrigendum have been published.

43. In spite of the fact that the Supreme Court on noticing the observations made in the above case reported in 1995 Crl.L.J.3992 issued a corrigendum expunging those observations as they were found to be erroneous, the Journals concerned have not t care to publish the said corrigendum.

44. The further agonising factor is that the Journal viz., Supreme Court Cases (Crl.) in the year 1997 published the above case as 1997 S.C.C.(Crl.) 651 without mentioning about the Suo Moto Review ordered by the Supreme Court on 24.4.1996 and the c gendum issued on 25.4.1996. Due to the failure of the Journals concerned to refer to the corrigendum, the Karnataka High Court following the observation made by the Supreme court without knowing that the same was held to be erroneous, was constrained t o acquit the accused in a murder case only on the ground that no signature of the accused was obtained in the confession.

45. As noted above, only the Kerala Journal in 1998 JV (1) p.1 to 5 had published the judgment and the orders relating to the suo moto review and consequent corrigendum promptly. When Kerala Journal, namely Judicial Vission had been careful enough publish the judgment as well as the corrigendum, it is not understandable as to why the other Journals which have got circulation all over India have failed to publish the corrigendum.

46. This Court cannot but express its anguish that due to the failure of the Journals in publishing the corrigendum, the prosecution had to meet its colossal failure resulting in injustice. Therefore, this Court would be

constrained to hold that t inding rendered by the Division Bench of this Court reported in 2002(1) L.W. (Crl.) 145 and by the Karnataka High Court in 1998 Cri.L.J.2479 that the failure to obtain signature of the accused in the confession statement would affect its authenticity and the reliability, cannot be held to be a good law, as held by the Supreme Court, while taking the matter suo moto review, by the order dated 25.4.1996.

47. Fortunately, it is now brought to the notice of this Court that the Supreme Court subsequently in STATE OF RAJASTHAN v. TEJA RAM (1999(1) S.C.C. (Cri) 436) has laid down the ratio holding that the signature of the accused in the confession is unnec essary, while recording the same by the investigating agency under Section 27 of the Evidence Act.

48. In that case, it was argued that the statement of the accused and the seizure-memos contained the signature of the accused and such a statement should not be obtained from the accused in view of the ban under Section 162 of the Code and as such, the seizure under Section 27 of the Evidence Act is illegal. In that context, the Supreme Court would observe that the signature of the accused in the statement under Section 27 is unnecessary and even if the signature is obtained, it is not illegal as Sect ion 162 Cr.P.C. would not apply to the statement under Section 27 of the Evidence Act. The relevant portion of the ratio decided by the Supreme Court is as follows:

"That apart, the prohibition contained in sub-section (1) of Section 162 is not applicable to any proceedings made as per Section 27 of the Act, 1872. It is clearly provided in sub-section (2) of Section 162 which reads thus: "Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian Evidence Act,1872 (1 of 1872), or to affect the provisions of Section 27 of that Act." The resultant position is that the investigating officer is not obliged to obtain the signature of an accused in any statement attributed to him while preparing seizure-memo for the recovery of any article covered by Section 27 of the Evidence Act. But i f any signature has been obtained by an investigating officer, there is nothing wrong or illegal about it."

49. The above observation made by His Lordship Justice K.T. Thomas on behalf of the Bench of the Supreme Court would make it clear that it is not obligatory on the part of the investigating officer to get the signature of the accused in the confessi tatement recorded under Section 27 of the Evidence Act and as such, the failure to obtain the signature of the accused in that statement would not make the statement invalid in the eye of law. Hence, the first contention urged by the counsel for the appe llant would fail.

50. Secondly, it has been contended by the counsel for the appellant that the accused was arrested only on suspicion and as such, it cannot be construed that he was under police custody as the accused in this case, while he made a confessional state and consequently, the recoveries made based on the said confession are bad in law. The counsel for the appellant would cite the decision in IN RE, MALLADI RAMAIH (A.I.R.1956 ANDHRA 56).

51. In the said judgment, it is held as follows:

"Before the provisions of the Section 27 of the Evidence Act are attracted, two essential requirements should be satisfied, namely, that the person making the statement is accused of any offence and is also in the custody of a police officer. It is y then that the information leading to the discovery could be received in evidence."

52. On the basis of this observation, it is contended that he was not an accused in this case at the time of making statement and as such, the requirements are absent and therefore, the statement would fall outside the purview of Section 27 of the A

53. This submission would not deserve acceptance for the reason that the facts of the case on hand would reveal that both these requirements are fully satisfied.

54. The specific evidence of P.W.21, the Inspector of Police, in chief examination is as follows:

"On 7.10.96 at 09.30 hours I arrested the accused at the junction of Bussy street and Bharathi street, Pondicherry and brought him to Odieansalai P.S. wherein he gave a statement about the crime done by him".
Though in the cross-examination, he stated that at about 9.45 hours on 7.10.1996 he brought the accused to the police station under suspicion, he has given clarification with regard to suspicion in the following words:
"On my investigation, I came to the conclusion that suspect Natarajan has committed the offence through my informants".
The above deposition would make it clear that he had the information from his informant about the involvement of Natarajan, the accused in this case and on such information and suspicion, he arrested the accused at 9.30 A.M. on 7.10.1996 at the Bazaar an d brought to the police station for interrogating the accused and while he was in custody after arrest in this case, he gave a confession statement. Thus, it is clear that both the requirements as contemplated under Section 27 of the Evidence Act have b een satisfied.

55. This can be looked at from yet another angle.

56. A question was raised before the Supreme Court as to whether the information given by the accused to the police while he was already on bail which led to the recovery would attract Section 27 of the Evidence Act. The answer has been given by th nstitution Bench in A.I.R.1980 S.C.1632 (supra) in the following words:
"Besides, if and when the occasion arises, it may be possible for the prosecution to claim the benefit of S.27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking t rinciple stated by this Court in State of U.P. V. Deoman Upadhayaya (1961(1) SCR 14 at p.26=AIR 1960 SC 1125) to the effect that when a person not in custody approaches a police officer investigating an offence and offers to give information leading to the discovery of a fact, having a bearing on the charge which may be made against him, he may appropriately be deemed to have surrendered himself to the police."

57. The relevant observation by a Constitution Bench of the Supreme Court in A.I.R.1960 S.C. 1125(supra) which has been followed in AIR 1980 S.C.1632 is as follows:
"Counsel for the defence contended that in any event Deoman was not at the time when he made the statement attributed to him, accused of any offence and on that account also apart from the constitutional plea, the statement was not provable. This ention is unsound. The expression "accused of any offence" is descriptive of the person against whom evidence relating to information alleged to be given by him is made provable by S.27 of the Evidence Act. It does not predicate a formal accusation aga inst him at the time of making the statement sought to be proved, as a condition of its applicability."

58. These decisions would clearly show that even though the accused was not formally arrested, once he appears before the police and offers to give information leading to the discovery of a fact, he must be deemed to have surrendered himself to the ce and as such, in the said surrender, the information given by him is provable under Section 27 of the Evidence Act.

59. However, in this case, as indicated above, there is a clear evidence that P.W.21, the Inspector of Police got the information from his informant about the involvement of the accused Natarajan in this case and therefore, he arrested the suspect sed on the said information and brought him to the police station where he gave a voluntary confession which led to the recovery of the articles. As such, both the requirements are very much present in this case.

60. In this context, it is also relevant to refer to the decision of the Supreme Court in STATE OF MAHARASHTRA v. DAMU (2000(6) S.C.C.269), wherein it is held that it is a worthless exercise on the part of the court to ponder over how or from whic urce the investigating officer had come to know the involvement of the accused and that the accused was desiring to confess as the investigating officer can have different sources to know that fact and he is not obliged to state in court the same, partic ularly in view of the ban contained in Section 162 of the Code of Criminal Procedure.

61. In view of the above fact and law situation, we are unable to accept this contention as well urged by the counsel for the appellant.

62. The next submission made by the counsel for the appellant with vehemence is that Ex.P9 confession statement cannot be said to be an informative one as it does not contain the particulars of the places from where the objects could be recovered an at the recovery on the basis of Ex.P9 cannot be held to be valid in law as the expression "fact discovered" includes not only the physical object, but also the places from where it is produced and the knowledge of the accused as to this. In support of t his plea, the counsel for the appellant would cite the decisions in DEVIDAS v. STATE OF MAHARASHTRA (1982 CRI.L.J.2189) and JOSEPH v. STATE OF KERALA (1997 CRI.L.J.4289).

63. There is no dispute in the proposition laid down by the Bombay

High Court in 1982 CRI.L.J.2189(supra) that it is the statement giving information leading to the discovery which is admissible in evidence and the mere discovery by the accused cann e said to be of any legal consequence, if it is not preceded by the informative statement on the part of the accused. There cannot be any quarrel over the proposition held by the Kerala High Court in 1997 CRI.L.J.4289(supra) that the information given b y the accused must lead to the discovery of the fact which is the direct outcome of such information. In other words, what should be discovered is the material fact and the information that is admissible is that which has caused that discovery so as to connect the information and the fact with each other as the cause and effect. That information which does not distinctly connect with the fact discovered or that portion of the information which merely explains the material thing discovered is not admis sible under Section 27 of the Evidence Act.

64. The above decisions would clearly show that the informative statement given by the accused when does not lead to discovery of the material fact which relates to the commission of the offence, is not provable under Section 27 of the Evidence Act n this case, whether these requirements have been satisfied or not is to be seen in the light of the provision under Section 27 of the Evidence Act.

65. Before dealing with the same, it would be proper to refer to some of the guidelines relating to the scope of Section 27 of the Evidence Act codified by the various Courts and the Supreme Court.

66. The observation in PULUKURI KOTTAYA v. EMPEROR (A.I.R.1947 Privy Council 67) is as follows:
"It is fallacious to treat the "fact discovered" within the section as equivalent to the object produced. The fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information give ust relate distinctly to this fact."

67. In STATE OF RAJASTHAN v. BHUP SINGH (1997 S.C.C.(Cri) 1032), it is held as under:
"The conditions prescribed in Section 27 for unwrapping the cover of ban against admissibility of statement of the accused to the police have been satisfied. They are: (1) A fact should have been discovered in consequence of information received fr he accused; (2) he should have been accused of an offence; (3) he should have been in the custody of a police officer when he supplied the information; (4) the fact so discovered should have been deposed to by the witness. .... Here the fact discovered b y the police is not Article 4 the pistol, but that the accused had buried the said pistol and he knew where it was buried. Of course, discovery of the said fact became complete only when the pistol was recovered by the police."

68. In STATE OF MAHARASHTRA v. DAMU GOPINATH SHINDE (2000 CRI.L.J.2301=2000(6) S.C.C. 269), it is observed as follows:
"The basic idea embedded in S.27 of the Evidence Act is the doctrine

of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered in a search made on the strength of any information obtained from a p ner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature, but if it results in discovery of a fact it becomes a reliable information."

69. In PANDURANG KALU PATIL v. STATE OF MAHARASHTRA (2002(1) SCALE 290 (SC)), it is held as follows:
"A fact can be discovered by the police pursuant to an information elicited from the accused if such disclosure was followed by one or more of a variety of causes. Recovery of an object is only one such cause. Recovery, or even production of objec y itself need not necessarily result in discovery of a fact..... No doubt in a given case an object could also be a fact, but discovery of a fact cannot be equated with recovery of the object though the latter may help in the final shape of what exact ly was the fact discovered pursuant to the information elicited from the accused."

70. In STATE OF KARNATAKA v. DAVID RAZARIO (2002(6) SCALE 500 (SC)), it is observed thus:
"No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which "distinctly relates to the fact thereby discovered". But the information to get admissibility need not be so truncated as to make nsensible or comprehensible. The extent of information admitted should be consistent with understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the info rmation given."

71. From the above observations, the following principles would emerge:

(1) Under Section 27, where the statement of the accused distinctly relates to the discovery it will be admissible whether it is confessional or not. Even when these words contained in the statement show some of the offences, the same would not pro he said offences for the reason after the articles have been recovered, the prosecution has still to show that the articles recovered are connected with the main crime.

(2) If any fact is discovered as a search made on the strength of any information from the accused, such a discovery is a guarantee that the information supplied by the accused is true.

(3) A fact can be discovered by the police pursuant to an information elicited from the accused if such disclosure was followed by one or more of a variety of causes. Recovery of an object is only one such cause. An object could also be a fact, bu scovery of a fact cannot be equated with recovery of the object though the latter may help in the final shape of what exactly was the fact discovered pursuant to the information.

(4) The basic idea embedded in Section 27 of the Evidence Act is the

doctrine of confirmation by subsequent events. The "fact discovered" envisaged in the section embraces the place from which the object was produced, the knowledge of the accused a it.

(5) A fact should have been discovered in consequent to the information received from the accused. The fact so discovered should have been deposed to by the witness.

72. The decisions referred to above and the principles emerged from the decisions mentioned above would never indicate that the full details such as addresses etc. of the places from where the objects are to be recovered have to be mentioned in the fession. The only requirement contemplated under Section 27 of the Evidence Act is that the discovery of the fact in pursuance of the information given by the accused would embrace the place from where to be recovered as well as the objects recovered.

73. Bearing in mind the above principles, we have to consider Ex.P9 to decide as to whether the same is informative referring to the places where the articles involved in the offence were kept and in pursuance of the said the confession, the place re shown and the said articles were recovered from those places, which is provable under Section 27 of the Evidence Act.

74. The admissible portion which has been marked as Ex.P9 is as follows:
"vd;id miHj;Jr; brd;why; ehd; nkw;go rt[e;jhp mk;khs; bfhiy bra;j ,lj;ija[k;. gpzj;ij nghl;l fpzw;iwa[k;. mthplkpUe;Jk;. mykhhpapy; ,Ue;Jk; jpUoa eiffis kiwj;J itj;jpUe;j ,lj;ija[k;. bfhiy bra;ag; gad;gLj;jpa cyf;ifiaa[k;. uj;jf;fiw goe;j ntl;oiaa[k khjpuj;ij mlkhdk; itj;j filiaa[k;. mlkhd urPJ bfhLj;J itj;Js;s re;jpunrfuida[k;. rl;il. ngz;l;. ifyp itj;Js;s ,lj;ij[a[k;. ehd; j';fsplk; milahsk; fhl;Lfpnwd;//
The translated version of Ex.P9 is this:
"If I am taken, I will show you the place where Soundari Ammal was killed; the well where the dead body was thrown, the place where the jewelleries stolen from the deceased and the almirah were kept; the rice pounder used to kill the deceased; the b stained dhoti; the shop where the ring was pledged; point out Chandrasekaran to whom the pawn ticket had been given and show the place where the shirt, pant and lungi were kept."

75. According to P.W.21, in pursuance of the confession Ex.P9, the accused took P.W.21, the investigating officer and P.W.10, the mahazar witness to his house at Keeraikadai Street at 12.40 P.M. As pointed out by the accused, P.W.21 recovered rice der M.O.38, lungi M.O.39, shirts and pant M.Os.40, 41 and 47.

76. Then, the accused took them to a bush next to his house and took out a Rexene bag M.O.42. M.O.42 bag was found to contain the jewels M.Os.3, 5 to 14, 48 to 50. This was seized under the mahazar Ex.P49 attested by P.W.10 and another. All the j s were identified by P.W.4, the family friend of the deceased as that of the deceased. On analysis, the rice pounder was found to contain human blood as per Ex.P56, the report of the Serologist.

77. Thereafter, the police party and the witnesses were taken to the well from where M.O.4 Thali and M.Os.43 and 44, Ammi and saree were recovered after draining out the entire water. From there, the accused took the police party to his friends ro t Dharmapurai area at Pondicherry. P.Ws.14 and 15, the friends were available. According to P.W.14, the accused came to the room on 30.9.1996 at 12 mid night and both his shirt and dhoti were found stained with blood. He requested P.W.14 to give some other clothes and removed his bloodstained clothes M.O.45 shirt and m.O.46 dhoti and put them in the kitchen and P.W.14 gave his clothes M.O.38 lungi and M.O.40 shirt. When the accused took the police party to the house, he went inside the kitchen and t ook out the bloodstained clothes M.Os.45 and 46 and handed over the same to P.W.21. This was seized under mahazar Ex.P52.

78. When the bloodstained dhoti M.O.46 was sent for chemical analysis, the same was found to contain 'O' group human blood which tallied with the group of the blood found on the broken Beer bottle M.O.19 recovered from the scene. When M.Os.45 and were recovered, P.W.15 another friend produced Ex.P19 pawn chit and told P.W.21 that the said pawn chit relates to the pledging of a ring with Pawn Broker and the same was kept by him as requested by one Chandrasekar to whom the said pawn chit was handed over by the accused.

79. Then, the accused took the police party to the shop of Pawn Broker and pointed out P.W.13 Mahaveer Chand Jain stating that he pledged a ring with him. On interrogation, P.W.13 told P.W.21 that the accused pledged M.O.15 gold ring and so saying howed the carbon copy Ex.P20 of the original Ex.P19 and produced M.O.15.

80. Thus, it is clear that the information given by the accused in Ex.P9, resulted in the recovery of the jewels and the weapon of offence. As indicated above, the jewels were identified by the witnesses as that of the deceased. The rice pounder M 8 recovered at the instance of the accused was found to contain the human blood.

81. It is strenuously contended that P.W.10 would state that the accused was in the Van when the recovery was made. This statement of P.W.10 is purely a mistake because the evidence of P.Ws.13, 14, 15 and 21 would clearly show that the accused came pointed out the places from where the objects were recovered. Therefore, the said statement of P.W.10 would not be of any use to the defence.

82. It is true that the accused mentioned in Ex.P9 confession that he will show the place where the deceased was killed, the well where the dead body was thrown and the place where the jewelleries stolen were kept and the rice pounder used for killi he deceased. Pointing out the place where Soundariammal was killed and the well where the dead body was thrown would not be relevant as the said places were already known to the police. Similarly, the word "stolen" indicating that the jewelleries were st olen by him and the words "used to kill the deceased" indicating that the accused used rice pounder to kill the deceased may not be relevant. Similarly, the words "point out Chandrasekaran to whom the pawn ticket had been given" also would not

attract S ection 27 of the Evidence Act, since no such pawn ticket was recovered from Chandrasekaran.

83. As indicated above, merely because some of the words contained in Ex.P9 are not relevant, we cannot reject the entire Ex.P9, as it is held in the above judgments of the Supreme Court that the informative statement whether it is confessional or n an be admitted in evidence provided it leads to the discovery of fact.

84. Even assuming that some of the words used in the confession referred to above are to be eschewed from the purview of Section 27 of the evidence Act, the other portion of the wordings in Ex.P9 would clearly indicate that he made a statement which informative to P.W.21 that if he is taken, he would show the places where the jewelleries, rice pounder and the blood stained clothes were kept and also the shop where the jewel was pledged.

85. According to P.Ws.10 and 21, the accused took them to various places from where the jewelleries, rice pounder and bloodstained clothes were recovered. In other words, P.W.21 has not only made discovery of fact relating to places where the object ere kept and also made a recovery of those objects such as weapon of offence and jewels.

86. Both P.Ws.14 and 15 are the friends of the accused and the same was not denied. According to them, the bloodstained clothes which were recovered from their room at the instance of the accused were worn by the accused when he came on 30.9.1996 a mid night and stayed there in the night. P.W.15 would state that Ex.P19, the original pawn receipt was handed over by Chandrasekar whose name has been referred to in Ex.P9. Thereafter, the accused took the police party to the shop of P.W.13, the Pawn Broker from whom M.O.15 ring was recovered. So, apart from the recovery of the weapon, jewels and bloodstained clothes at the instance of the accused, the recovery of M.o.15 from P.W.13 and his evidence would also indicate that after the occurrence was over, on 2.10.1996 the accused came and pledged only one jewel, namely M.O.15 ring with P.W.13 and obtained money.

87. A perusal of Ex.P19, the original and Ex.P20, the carbon copy would clearly show that they had been prepared at the same time. Of course, the signature of the accused was not found in Ex.P19 original receipt, but his signature was found in Ex.P2 ich was produced by P.W.13 before the Court. P.W.13 has given explanation that he did not use to get the signature in the original receipt from the customers in order to avoid its misuse by others. Similarly, he has also given explanation for the correct ions made in some of the receipts. This explanation, as correctly held by the trial Court, is reasonable and acceptable. Furthermore, there is no denial on the part of the accused with reference to his signature found in Ex.P20.

88. In short, it is to be stated that but for the information given under Ex.P9 by the accused to the police, the places would not have been discovered and material objects would not have been recovered.

89. Under those circumstances, while rejecting this contention, it

has to be held that the recovery of the jewels, the weapon of offence and the bloodstained clothes in pursuance of his confession would be admissible, in view of the fact that the r rements under Section 27 of the Evidence Act have clearly been satisfied.

90. Nextly, it was argued that the finger print of the accused was not taken in the presence of the Magistrate and as such, the evidence relating to the same cannot be relied upon as held in MOHD. AMAN v. STATE OF RAJASTHAN (1997 S.C.C. (Cri) 777 91. The facts of that case are entirely different from the case on hand, as in that case, the Court found several suspicious features with reference to the sending of the bottles containing finger prints to the court. In the said decision itself, i observed that Section 5 of the Identification of Prisoners Act under which the order of the Magistrate is passed would never restrict the powers under Section 4 of the Act by which the police is competent to take finger prints of the accused.

92. In this case, no such suspicion would arise, in view of the fact that the evidence of P.W.21 who stated that he took finger prints from the accused has never been challenged. As a matter of fact, no suggestion has been put to P.W.21 on the side the defence that he did not take the finger prints nor took them under compulsion from the accused. Therefore, this argument also does not deserve acceptance.

93. It is noticed that a strange suggestion has been put to P.W.21, the Inspector of Police by the accused that the jewels recovered in this case did not belong to the deceased. This suggestion however was never put to P.Ws.4 and P.W.12, who ident d the jewels as that of the deceased. When the prosecution has established that the jewels concealed have been recovered from the bush near his house as pointed out by the accused, it is for the accused to establish as to how he came into possession o f the jewels, especially when the defence suggested to P.W.21 that the jewels did not belong to the deceased. Admittedly, he never gave any explanation either through the witnesses or in the statement under Section 313 Cr.P.C. as to how the jewels came t o his possession. Curiously, the accused never stated anything regarding this in his statement under Section 313 Cr.P.C.

94. Having regard to the analysis of the entire materials made in the foregoing paragraphs, we are of the considered view that the circumstances put forth by the prosecution have been cogently and firmly established and the same in cumulative would a complete chain without any missing link and these circumstances undisputedly point towards the guilt of the accused. As such, we have no hesitation to hold that the accused alone had committed this cruel and gruesome murder of an old lady for gain.

95. In fine, the appeal is dismissed confirming the conviction and sentence imposed upon the appellant/accused by the trial Court.

96. Before parting with this case, this Court feels it necessary to make observation regarding the failure of the Law Journals in publishing the corrigendum issued by the Supreme Court to make the public including the legal

fraternity know that observation made by the Supreme Court with regard to the particular aspect has been eschewed. If such publication has not been made in the Law Journals after issuance of the corrigendum, the Bench would be constrained to think that the law laid down by the Supreme Court through the said observation would be binding on them in view of Article 141 of the Constitution of India and consequently follow the same in deciding the cases. As indicated above, the Supreme Court held in April, 1995 that the failure to obtain signature of the accused in the confession would affect the authenticity of the same. But in the year 1996, in a Suo Moto Review, the very same Bench of the Supreme Court corrected its view by issuing corrigendum holding that the said ratio de cided by them was erroneous. The learned counsel for the appellant while citing the judgment in 1997 S.C.C.(Cri) 651=AIR 1995 S.C.2345 had thought bona fide that the judgment of the Supreme Court which has been followed by the Karnataka High Court in 19 98 CRI.LJ.2479 has never been reviewed or overruled. When this Court felt that it would be necessary to verify the present legal position with regard to the same in the light of the observation made by the Supreme Court in the judgemnt reported in 1997 S.C.C.(Cri) 651, this Court sought the assistance of Mr.I.Subramanian, the learned Public Prosecutor, State of Tamil Nadu asking him to find out the present legal position and place the decisions before this Court. Accordingly, he responded by getting t he copy of the order issuing the corrigendum dated 25.4.1996 from the Supreme Court Registry itself and placed before this Court. Thereafter, on our own verification, it was found that this corrigendum was published only in Kerala Journal, namely 1998 J udicial Vision. Therefore, it is clear that the judgment of the Supreme Court in Jaskaran's case reported in 1995 Crl.L.J.3992 = A.I.R. 1995 S.C.2345 = 1997 S.C.C. (Cri) 651 cannot be cited for pleading that the absence of signature of the accused in th e confession would affect the authenticity and the reliability of the confession. It is brought to our notice by the State Public Prosecutor that the corrigendum had not been published in any of the journals including the Criminal Law Journal, All India Reporter and Supreme Court Cases (Crl.), wherein the main judgment alone was published. Due to the said failure, the Bar and Bench of Tamil Nadu and Pondicherry could not know that the finding of the Supreme Court with reference to the above aspect has been held to be erroneous. Therefore, it would become necessary for this Court to issue direction to the Home Secretaries of Tamil Nadu and Union Territory of Pondicherry to get the copy of this judgment and to ensure that the copies of the judgment are circulated to all the Prosecutors all over Tamil Nadu and Pondicherry to enable them to know the present position of law and to bring the same to the notice of the concerned court and accordingly directed. Mr.I.Subramanian, the learned Public Prosecuto r of Tamil Nadu and Mr.Murugesan, the learned Public Prosecutor for Pondicherry are directed to send the copy of the judgment along with covering letter to the respective Home Secretaries indicating the nature of the directions issued by this Court. Thi s Court places on record with appreciation the services rendered by Mr.I. Subramanian, the Public Prosecutor of Tamil Nadu.

Index : Yes
Internet: Yes

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To
1) The II Addl. Sessions Judge, Pondicherry.
2) -do- the Principal Sessions Judge, Pondicherry.
3) The Superintendent, Central Prison, Pondicherry.
4) The Inspector of Police, Odiensalai Police Station, Pondicherry.
5) The District Collector, Pondicherry.
6) The Public Prosecutor of Tamil Nadu, High Court, Madras.
7) The Public Prosecutor for Pondicherry,High Court,Madras.
8) Supreme Court Cases (Criminal)
9) Criminal Law Journal
10) All India Reporter
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